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1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK

3 UNITED STATES OF AMERICA,

4 v.

16 Cr. 654 (JSR)

5 YOUSIF MOSLEH,

6 Conference

7 Defendant.

8 -----x
9 New York, N.Y.
10 April 24, 2017
11 3:00 p.m.

12 Before:

13 HON. JED S. RAKOFF,

14 District Judge

15 APPEARANCES

16 JOON H. KIM
17 Acting United States Attorney for
18 the Southern District of New York
19 AMANDA L. HOULE
20 Assistant United States Attorney

21 LANCE LAZZARO
22 Attorney for Defendant
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(Case called)

THE COURT: Good afternoon. We're here for sentencing. The parties are agreed that the total offense level is 18, the criminal history category is I, and therefore the guideline range, which is not binding on the Court but which the Court must consider, is 27 to 33 months.

Let me hear first from defense counsel, then from government counsel, then from the defendant if he wishes to be heard.

MR. LAZZARO: Your Honor, I'm going to ask that, on the factors in 3553(a) that you consider a sentence of probation for five years, and while I think that if you consider the history of my client, Mr. Mosleh, and you'll see, Judge, on the letters I submitted, a common theme throughout, that when any of his friends are in need, including Ms. Gonzalez, who is here in the courtroom, he's always there in a moment's notice to try and help. He'll drop everything and try and help the next person, and I think that's common throughout in all the letters I submitted.

And there was another letter, Judge, I submitted this morning from City Year New York, and I think that's kind of where Mr. Mosleh has learned from what he did wrong and what he's now trying to do with his life. And if your Honor looked at the letter from City Year New York, your Honor, this is a program that's administered through, for kids that are

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1 underprivileged, where they try and do mentoring and so forth,
2 and a lot of times this agency goes to people that own stores
3 and they ask them to donate food.

4 When Mr. Mosleh was approached by this group, he ends
5 up not only doing it on two separate occasions, but he actually
6 attends and actually donates the food on two separate occasions
7 to these underprivileged students so that they can get
8 mentoring from other people. He actually goes there. Not only
9 does he provide the food, but he actually gives it out and does
10 everything, and he's done that on two or three separate
11 occasions for City Year. And I think if you look at the letter
12 that I submitted from Ms. Bratledge, she says that what he's
13 done is way above what any, what most people do for this
14 program. And I think that's where Mr. Mosleh is going with his
15 life, that he's learned that what he did in 2015 is quite
16 wrong, but now you see what he's capable of becoming, Judge.

17 THE COURT: Let me ask you this. First, according to
18 the presentence report, I'm quoting from paragraph A(1),
19 "During his presentence interview, the defendant told the
20 undersigned officer that he had never used any type of illegal
21 drug. However, he had previously admitted to his supervising
22 pretrial services officer that he used marijuana, and his first
23 two drug tests -- on September 7, 2016, and September 21,
24 2016 -- were positive for marijuana. Although all subsequent
25 tests have been negative, he failed to appear for testing on

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1 five occasions. We also note that hospital records from
2 November 2014 state that he admitted to using marijuana."

3 Also, it appears that he has never to this very moment
4 submitted a financial statement as required by the probation
5 office.

6 (Counsel conferred with defendant)

7 MR. LAZZARO: Judge, he actually, either Wednesday or
8 Thursday of last week, he actually brought --

9 THE COURT: When?

10 MR. LAZZARO: Wednesday or Thursday of last week, he
11 brought it to pretrial.

12 (Counsel conferred with defendant)

13 THE COURT: What happened to the weeks before that?

14 MR. LAZZARO: He was having trouble filling it out,
15 and he came to my office and I helped him. And he brought it.

16 THE COURT: Does someone have a copy of that?

17 MR. LAZZARO: I know that he gave it to pretrial. Let
18 me see if I made a copy of it, Judge.

19 I did not make a copy of it, your Honor, but it was
20 submitted. He actually brought it down to pretrial and
21 submitted it himself.

22 THE COURT: How can I impose sentence without having
23 that information? It appears to me, first, that he lied to the
24 probation officer; second, that he didn't appear on numerous
25 occasions when directed to by the probation officer, presumably

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1 because he knew he would test positive then; and third, even
2 though part of your entire application to the Court for a low
3 sentence is based on financial circumstances of both him and
4 those he supports, we haven't received a financial statement,
5 even though weeks were provided to do so. It sounds to me like
6 we're in one of two situations. Either we can't go forward
7 with sentence today, or if we do, I'm going to infer, unless I
8 hear some good reason from you, that this guy thumbed his nose
9 at the probation department.

10 MR. LAZZARO: Judge, I would ask that we adjourn the
11 sentencing. He did not thumb his nose at probation.

12 THE COURT: Does he deny lying to the probation
13 officer?

14 (Counsel and defendant conferred)

15 MR. LAZZARO: He has no explanation why he said that,
16 Judge.

17 THE COURT: All right. So he admits it.

18 MR. LAZZARO: He does.

19 THE COURT: What about all the times he failed to
20 appear?

21 (Counsel and defendant conferred)

22 MR. LAZZARO: He says that he did miss four
23 appearances, but he said that was due to conflicts with his
24 work schedule.

25 THE COURT: Wait, wait.

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1 MR. LAZZARO: Your Honor --

2 THE COURT: So apparently he's more interested in that
3 than in the sentence that this Court is going to impose,
4 because he pays no attention to the directions of the probation
5 officer. I'm going to grant you an adjournment, because if I
6 had to impose sentence right now, I would be drawing such
7 negative inferences about him and his character that I would
8 probably give him more of a sentence than I properly should.
9 We will adjourn this sentence.

10 Let's see what's available on Friday this week.

11 THE DEPUTY CLERK: Friday of this week, the 28th, you
12 are out in the afternoon, at 1:15.

13 THE COURT: OK. What about the morning?

14 THE DEPUTY CLERK: And the morning is free.

15 THE COURT: 11:00 Friday. We'll see you then.

16 (Adjourned)

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